IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 657 of 2002(D)

IC.72/1999 of ESI COURT, PALAKKAD

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APPELLANT: APPLICANT IN I.C.

EDIBLE CIL COMPANY IV/361,PATTAMBIKALAM
PATTAMBI,REPRESENTED BY ITS PARTNER,
P.K.GOPINATHAN.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS: OPPOSITE PARTY IN I.C.

EMPLOYEES' STATE INSURANCE CORPORATION
REPRESENTED BY ITS REGIONAL DIRECTOR (KERALA)
PANCHDEEP BHAVAN, ROUND NORTH,THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2007 THE COURT ON 19/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

M.F.A No. 657 of 2002

Dated this the 19th day of June 2007

JUDGMENT

The applicant in I.C. No. 72/1999 on the file of the Employees' Insurance Court is the appellant. This appeal is filed challenging an order passed by the Employees' Insurance Court dismissing an application filed by the appellant for declaration that the establishment run by him was not liable to be covered under the provisions of the E.S.I.Act. On 19-5-1998 two Inspectors of the respondent Corporation conducted inspection and submitted a report to the effect that the establishment run by the appellant was liable to be covered. In the report the Inspectors had stated that during 1995 the total number of employees worked in the establishment between the month of January to October was above 10. According to the Inspectors during the entire year of 1996 the total number of employees were 8 and there were 9 employees in January and February of 1997 and thereafter till the month of January 1988 there was 8 employees. Thereafter the appellant was employed only three employees. On the basis of this the Regional Director of the Corporation issued notices to the appellant calling upon him to pay contribution.

2. Challenging the issuance of C11 notice of the Regional Director the appellant filed I.C. No. 72 of 1999 before the Employees' Insurance Court contending that at no point of time ten or more

employees were engaged by him. The respondent raised a contention that on verification of Muster roll and wage register it was found that 12 persons (3 in office and 9 in the factory) were employed in the establishment during January 1995. The Insurance Court found that the unit run by the appellant was liable to be covered under the provisions of the Act and dismissed the application. Challenging that order this appeal is filed.

3. The learned counsel appearing for the appellant has produced the copy of the order issued by the Joint Director of Factories and Boilers to show that this appellant firm was closed down with effect from 31-3-1999 permanently. The only evidence relied on by the respondent to hold that there were 12 employees working during January 1995 was the Muster roll produced by the appellant which contain the seal of the appellant as well as the signature of its Managing Partner. The Inspectors had given evidence to the effect that on the date of examination there were only 3 employees working in the factory of the appellant. It was also admitted that the appellant establishment was working on that date. They had never inspected the premises any day prior to or after that date. The case put forward by the appellant was that he was the owner of another expeller establishment by name Sahaja Oil Mills which was situated at an area wherein the provisions of the E.S.I.Act was not made applicable. It was contended that due to an inadvertent omission he had affixed the seal and signature of the

appellant firm in the muster roll of the other establishment It is to be noted that the specific case of the respondent is that the establishment run by the appellant was employing more than 10 persons in one premises and not at two establishments. The respondent had no case that the appellant was the owner of two establishments and both establishments are to be clubbed together and treated as a single unit for the purpose of coverage. Further the report of inspection does not show that there were 12 employees. In view of the fact that the establishment was closed down with effect from 31-3-1999, I am of the view that the explanation offered by the appellant can be accepted. If that explanation is accepted there is no material to hold that the appellant employed 10 or more persons So the factory of the appellant is not liable to be covered. The appeal is to be allowed.

4. In the result the M.F.A is allowed. The order passed by the insurance Court Palakkad in I.C. 72/1999 and the order passed by the respondent that the firm of the appellant is liable to be covered hereby set aside It is declared that the edible oil company which was a factory run by the appellant was not liable to be covered under the provision of the E.S.I. Act.

K.PADMANABHAN NAIR, JUDGE

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